

<sup>3</sup> Appellant's application for review seeks to appeal a July 15, 2016 OWCP decision. The record, however, does not contain a July 15, 2016 OWCP decision. The most recent adverse OWCP decision over which the Board may take jurisdiction is dated May 24, 2016. *See* 20 C.F.R. §§ 501.2(c) and 501.3.

## **ISSUE**

The issue is whether appellant has met her burden of proof to establish continuing disability or medical residuals commencing January 31, 2013, causally related to the accepted employment injury.

On appeal counsel contends that the February 19, 2016 report of Dr. Harris G. Tuttle, a Board-certified orthopedic surgeon, is sufficient to require OWCP to reinstate compensation benefits.

## **FACTUAL HISTORY**

This case has previously been before the Board. The facts and circumstances outlined in the Board's prior decisions are incorporated herein by reference. The relevant facts are as follows.

On January 23, 1991 appellant, then a 39-year-old secretary, filed an occupational disease claim (Form CA-2) alleging that she developed left hand and arm pain due to typing in the performance of duty. On August 16, 1991 OWCP accepted her claim for left hand sprain. Appellant stopped work and filed claims for wage-loss compensation (Form CA-7) for disability from work beginning July 27, 1992. She underwent a right de Quervain's release on February 5, 1993. On July 26, 1993 OWCP expanded acceptance of the claim to include right carpal tunnel syndrome. On April 14, 1994 the claim was again expanded to include left elbow extensor tendinitis. On August 11, 1994 the employing establishment noted that it did not have a position available within appellant's medical restrictions.

Appellant underwent a right carpal tunnel release on June 25, 1999. By decision dated April 27, 2000, OWCP terminated her wage-loss compensation and medical benefits. Appellant requested reconsideration and, on June 7, 2000, OWCP declined to reopen her claim for consideration of the merits. She appealed to the Board. In a January 31, 2001 order,<sup>4</sup> the Board granted a motion filed by the Director of OWCP to set aside the April 27 and June 7, 2000 decisions and remand the case to consider all the medical evidence submitted prior to the April 27, 2000 decision.

On April 11, 2001 appellant underwent a second surgical decompression of the right median nerve due to incomplete release of the transverse carpal ligament and severe scarring both externally and within the median nerve. At that time, she exhibited severe internal fibrosis and scarring within the right median nerve with neuroma formation and scarring causing pressure on the palmar cutaneous branch of the right median nerve, as well as chronic synovitis of the flexor tendons within the carpal canal. Appellant underwent left median and ulnar nerve decompression on May 25, 2001. OWCP entered her on the periodic rolls on April 17, 2001.

By decision dated January 29, 2009, OWCP terminated appellant's wage-loss compensation and medical benefits. Finding that the weight of the medical evidence rested with the second impartial medical examiner's report dated June 24, 2008. Appellant appealed to the

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<sup>4</sup> Docket No. 00-2309 (issued January 31, 2001).

Board and by decision dated December 30, 2009<sup>5</sup> the Board reversed the January 29, 2009 decision, finding that there was a second conflict between her physician, Dr. James E. Lowe, a Board-certified orthopedic surgeon, and Dr. Robert Elkins, a Board-certified orthopedic surgeon and prior impartial medical examiner, on the issue of whether she had any continuing disability or medical residuals as a result of her accepted employment injuries. The Board further found that OWCP had not resolved this conflict as the physician utilized as the impartial medical examiner had not been properly selected.

By decision dated March 25, 2011, OWCP again terminated appellant's wage-loss compensation and medical benefits, finding that the weight of the medical evidence of record was represented by the January 13, 2011 report of second opinion physician, Dr. Edward Mulcahy, a Board-certified orthopedic surgeon, who opined that she had no disability or residuals as a result of her accepted employment injuries. Appellant appealed to the Board and in its December 9, 2011 decision<sup>6</sup> the Board reversed the December 9, 2011 decision, finding an unresolved conflict of medical opinion evidence between appellant's physician, Dr. Lowe, and physicians for OWCP Dr. Mulcahy and Dr. Elkins, a Board-certified orthopedic surgeon.

In a letter dated January 23, 2012, OWCP referred appellant, a statement of accepted facts and a list of questions to Dr. William D. Schaefer, a Board-certified orthopedic surgeon for an impartial medical examination. In a February 15, 2012 report, Dr. Schaefer reviewed the statement of accepted facts and the medical record. He performed a physical examination and found well-healed scars in the right arm with full range of motion and normal strength. Dr. Schaefer reported normal sensation. He noted appellant's report of inconsistent pain with grip and extension of the wrist. On the left Dr. Schaefer found full range of motion, normal strength, and sensation. He diagnosed chronic pain syndrome and listed appellant's surgeries. Dr. Schaefer noted that appellant had a normal physical examination of both arms. He concluded that her left wrist strain, left elbow tendinitis, and right carpal tunnel syndrome had resolved. Dr. Schaefer noted that appellant was physically capable of performing her duties of secretary, but might require some activity modification to avoid repetitive activity. He noted that she had no residuals from her January 14, 1991 work injury and no evidence of triggering digits. Dr. Schaefer repeated that appellant could work with restrictions against repetitive motion. In a February 5, 2012 work capacity evaluation, he noted that repetitive motion would likely cause her symptoms to worsen. Dr. Schaefer restricted appellant to two hours each of repetitive wrist and elbow movements. He advised, "[Appellant] does appear to have a chronic pain disorder although the accepted conditions have reached maximal medical improvement and there is no clinical evidence of residual symptoms. This pain disorder may limit her ability to perform repetitive tasks."

On May 7, 2012 OWCP requested that Dr. Schaefer provide a supplemental report regarding appellant's work restrictions. It specifically asked whether the work restrictions were due to the January 14, 1991 work injury or preventative measures. Dr. Schaefer responded on June 6, 2012, opining that appellant's work-related injuries had resolved, but that she would benefit from preventative work restrictions.

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<sup>5</sup> Docket No. 09-0892 (issued December 30, 2009).

<sup>6</sup> Docket No. 11-1134 (issued December 9, 2011).

On June 19, 2012 OWCP requested that Dr. Schaefer provide an additional supplemental report whether appellant's accepted conditions caused a trigger finger condition. On July 12, 2012 Dr. Schaefer responded opining that her accepted work-related conditions did not cause a trigger finger.

On December 26, 2012 OWCP proposed to terminate appellant's wage-loss compensation and medical benefits based on Dr. Schaefer's reports. In a January 31, 2013 decision, it finalized the termination. Appellant appealed the Board on February 11, 2013. By decision dated May 21, 2013, the Board found that OWCP met its burden of proof to terminate her wage-loss compensation and medical benefits, effective January 31, 2013, based on the reports of Dr. Schaefer.<sup>7</sup>

On September 4, 2013 appellant requested reconsideration. She disagreed with Dr. Schaefer's findings and conclusions and alleged that her conditions of carpal tunnel and severe tendinitis were ongoing. In support of her request, appellant submitted a note dated July 29, 2013 from Dr. Tuttle. Dr. Tuttle noted her history of wrist pain for 22 years due to her federal job duties, which included of repetitive keyboarding, stamping, and punching. He performed a physical examination and found swelling in both wrists. Dr. Tuttle noted that appellant was experiencing fairly diffuse upper extremity pain bilaterally and recommended a magnetic resonance imaging (MRI) scan. Appellant underwent a right wrist arthrogram and MRI scan on August 12, 2013 which demonstrated moderate tenosynovitis.

By decision dated September 23, 2013, OWCP denied modification of its January 31, 2013 termination decision.

On January 22, 2014 appellant again requested reconsideration. She resubmitted her disagreement with Dr. Schaefer's findings. Appellant submitted a January 8, 2014 note from Dr. Tuttle. In this note, Dr. Tuttle reported subtle dorsal swelling, weak grip strength, and minimally positive carpal compression, Tinel's sign, and Phalen's test. He opined that appellant's carpal tunnel syndrome had recurred and noted that this condition was due to her work activities. Dr. Tuttle also diagnosed stenosing tenosynovitis.

By decision dated June 11, 2014, OWCP denied modification of the termination decision, finding that the report from Dr. Tuttle was not sufficient to establish an ongoing work-related condition.

Appellant again requested reconsideration on June 19, 2014 and argued that Dr. Tuttle was the weight of the medical evidence. Dr. Tuttle performed a right carpal tunnel release on April 17, 2014 with median nerve neurolysis and application of a nerve tube conduit due to recurrent carpal tunnel syndrome with median nerve incarcerated scar tissue. He noted that appellant's electromyogram (EMG) and nerve conduction velocity (NCV) studies confirmed persistent carpal tunnel syndrome. Dr. Tuttle reported finding considerable scar tissue encasing the median nerve which he dissected.

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<sup>7</sup> Docket No. 13-0744 (issued May 21, 2013).

OWCP issued a decision on July 2, 2014 denying modification of its prior decision. It noted that Dr. Tuttle's operative report did not establish that appellant's accepted employment-related condition of right carpal tunnel syndrome had recurred or that the condition was ongoing from January 31, 2013. OWCP explained what evidence was required to establish a recurrence of disability and requested that she submit a Form CA-2a if she believed that she had a recurrence of her accepted carpal tunnel syndrome.

On March 19, 2015 appellant, through counsel, again requested reconsideration. Counsel provided additional medical records from Dr. Tuttle. In a note dated August 28, 2013, Dr. Tuttle reviewed appellant's MRI scan and found fairly severe right wrist pain which "may be due to chronic repetitive use of the right wrist." He noted that she might also have a differential diagnosis of rheumatoid arthritis. In a note dated September 4, 2013, Dr. Tuttle recommended examination by a rheumatologist and provided a work restriction of no repetitive use of appellant's hands at work. On December 18, 2013 he found that she experienced severe pain in all fingers in both hands. Dr. Tuttle noted that appellant had undergone bilateral carpal tunnel releases, but felt that her symptoms had recurred. He opined that her carpal tunnel syndrome was due to repetitive use of her hands at her place of employment. Dr. Tuttle noted appellant's concurrent diagnosis of rheumatoid arthritis. He found that she was totally disabled and recommended carpal tunnel injections.

In a March 5, 2014 report, Dr. Tuttle found that appellant symptoms of bilateral hand pain with numbness and tingling of the thumb, index, and middle fingers, was consistent with carpal tunnel syndrome. He noted that her EMG and NCV studies supported this diagnosis. Dr. Tuttle also found that appellant's symptoms improved with carpal tunnel injections and did not improve with her anti-rheumatic drugs. He recommended repeat carpal tunnel surgical release. In a July 2, 2014 note, Dr. Tuttle opined that the repetitive activity of appellant's hands at work was the likely cause of her bilateral carpal tunnel syndrome. On October 15, 2014 he reported that she had fallen on her left hand and sustained a trapezial ridge fracture. Dr. Tuttle performed a left revision carpal tunnel release on July 22, 2014.

In a February 4, 2015 note, Dr. Tuttle described the scar tissue noted in appellant's left wrist on September 28, 2014. Appellant had significant scar tissue with the intercarpal tunnel adherent to the median nerve. Dr. Tuttle opined, "The median nerve is adherent to the overlying transverse carpal ligament and the scar tissue was profound, incarcerating the nerve throughout the entirety of the carpal tunnel." He concluded, "In my opinion, the scar tissue resulted from the previous surgical procedure in the left carpal tunnel and [appellant's] activity postoperatively." On March 18, 2015 Dr. Tuttle described appellant's right wrist scar tissue in a similar manner.

By decision dated June 5, 2015, OWCP denied modification of the termination decision noting, that Dr. Tuttle did not explain how appellant's scar tissue was connected to her work injury.

Appellant, through counsel, again requested reconsideration on March 2, 2016. In a note dated February 19, 2016, Dr. Tuttle responded to questions posed by counsel. He opined that appellant's hand pain in 2013 and 2014 was the result of scar tissue which slowly formed after her repeated right wrist surgeries. Dr. Tuttle noted that any time a surgery is performed there is

the possibility of new scar formation. He indicated that the September 2014 fall exacerbated appellant's underlying pathology, but did not increase the scar tissue. Dr. Tuttle opined that she previously had no clinical evidence of carpal tunnel syndrome because the nerve was functioning normally until the increasing scar tissue impeded it.

By decision dated May 24, 2016, OWCP denied modification of its prior decisions. It found that Dr. Tuttle's reports were too speculative to establish appellant's claim for ongoing disability or medical residuals due to her accepted employment injury.

### **LEGAL PRECEDENT**

As OWCP met its burden of proof to terminate appellant's medical and wage-loss compensation benefits, the burden shifts to her to establish that he or she had disability and medical residuals causally related to his or her accepted employment injury.<sup>8</sup> To establish causal relationship between the condition, as well as any disability claimed, and the employment injury, the employee must submit rationalized medical opinion evidence, based on a complete factual background, supporting such causal relationship. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.<sup>9</sup>

### **ANALYSIS**

The Board finds that appellant has failed to meet her burden of proof to establish continuing disability or medical residuals commencing January 31, 2013.

OWCP accepted appellant's claim for left hand sprain, a right de Quervain's release on February 5, 1993, right carpal tunnel syndrome, right carpal tunnel release on June 25, 1999, and left elbow extensor tendinitis. It also accepted an April 11, 2001 surgical decompression of the right median nerve as well as left median and ulnar nerve decompression on May 25, 2001. By decision dated January 31, 2013 decision, OWCP terminated appellant's wage-loss compensation and medical benefits due to her accepted conditions.

Appellant has repeatedly requested reconsideration of the January 31, 2013 decision. In support of her requests for reconsideration, she submitted a series of medical reports from Dr. Tuttle beginning July 29, 2013. On January 8, 2014 Dr. Tuttle opined that appellant's carpal tunnel syndrome had recurred and attributed the condition to her work activities. He also diagnosed stenosing tenosynovitis. Dr. Tuttle examined appellant on August 28, 2013 and found

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<sup>8</sup> *George Servetas*, 43 ECAB 424, 430 (1992).

<sup>9</sup> *James Mack*, 43 ECAB 321 (1991).

fairly severe right wrist pain which “may be due to chronic repetitive use of the right wrist.” On December 18, 2013 he opined that her carpal tunnel syndrome was due to repetitive use of her hands at her job and that she was totally disabled. Dr. Tuttle repeated these findings on March 5 and July 2, 2014 opining that the repetitive activity of appellant’s hands at work was the “likely” cause of her bilateral carpal tunnel syndrome. While he provided a diagnosed medical condition and offered an opinion that this condition was related to her employment, he failed to provide any medical reasoning supporting his opinions. The Board has long held that medical opinions not containing rationale on causal relationship are of diminished probative value and are generally insufficient to meet appellant’s burden of proof.<sup>10</sup> The factors that comprise the evaluation of medical evidence include the opportunity for and the thoroughness of physical examination, the accuracy and completeness of the physician’s knowledge of the facts and medical history, the care of analysis manifested and the medical rationale expressed in support of the physician’s opinion.<sup>11</sup> The Board finds that Dr. Tuttle’s reports are of insufficient probative value on the issue of whether appellant has any continuing medical residuals or disability commencing January 31, 2013 due to her accepted employment injuries.<sup>12</sup>

In a note dated March 18, 2015, Dr. Tuttle further explained appellant’s right wrist condition as based on surgical examination. He noted that she had significant and profound scar tissue incarcerating the median nerve throughout the entirety of the carpal tunnel. Dr. Tuttle concluded, “In my opinion, the scar tissue resulted from the previous surgical procedure in the left carpal tunnel and [appellant’s] activity postoperatively.” In a note dated February 19, 2016, he opined that appellant’s hand pain in 2013 and 2014 was the result of scar tissue which slowly formed after her repeated right wrist surgeries. Dr. Tuttle noted that any time a surgery is performed there is the possibility of new scar formation. He opined that appellant’s median nerve was functioned normally until the increasing scar tissue impeded it.<sup>13</sup> OWCP, however, has not accepted scar tissue as causally related to the January 23, 1991 employment injury. Appellant has not provided a probative medical opinion to support that she was disabled or currently required medical treatment due to her employment-related carpal tunnel syndrome. The Board, therefore, finds that she has failed to meet her burden of proof to establish continuing disability after January 31, 2013.<sup>14</sup>

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

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<sup>10</sup> *K.N.*, Docket No. 16-1735 (issued February 8, 2017).

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> Once the primary injury is causally connected with the employment, a subsequent injury, whether an aggravation of the original injury or a new and distinct injury, is compensable if it is the direct and natural result of a compensable primary injury. *See S.L.*, Docket No. 14-1250 (issued December 2, 2015). If appellant believes that she has developed either a consequential injury or a new occupational injury from additional employment injuries, she may file an appropriate claim with OWCP.

<sup>14</sup> *P.C.*, Docket No. 16-1226 (issued March 23, 2017).

**CONCLUSION**

The Board finds that appellant has failed to meet her burden of proof to establish continuing disability or medical residuals commencing January 31, 2013, causally related to the accepted employment injury.

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 24, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 20, 2017  
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge  
Employees' Compensation Appeals Board